Supreme Court, U. S.
FILED
NOV 8 1976
MICHAEL RODAK JR. CLERK

# In the Supreme Court of the United States

**October Term, 1976**
**No. 477**

MARY F. MC NAMARA and ANARITA MC NAMARA,
*Petitioners*

Versus

REDEVELOPMENT AUTHORITY OF THE CITY OF SCRANTON, et al.,
*Respondents*

*On Petition for Writ of Certiorari to the Supreme Court of Pennsylvania.*

## BRIEF FOR RESPONDENT REDEVELOPMENT AUTHORITY OF THE CITY OF SCRANTON, IN OPPOSITION

ROGER MATTES
Mears Building
Scranton, Penna. 18503
*Attorney for Respondent, Redevelopment Authority of the City of Scranton*

*Of Counsel:*
LEO A. SOUTHARD
PHILIP R. EVANS
700 Scranton Electric Bldg.,
Scranton, Pennsylvania 18503

Murrelle Printing Co., Law Printers, Box 100, Sayre, Pa. 18840
Marita E. Paparelli, Lackawanna County Representative,
Courthouse, Scranton, Pa. 18503

## TABLE OF CONTENTS


| | PAGE |
|---|---|
| Question Presented | 1 |
| Statement of the Case | 2 |
| Argument | 4 |
| Conclusion | 6 |


## TABLE OF CASES


| | |
|---|---|
| Beck v. Washington, 369 U.S. 541, 82 S.Ct. 955 (1962) | 4 |
| Delia v. Court of Common Pleas of Cuyahoga County, 418 F.2d 205 (6th Cir. 1969), cert. denied 396 U.S. 886, 90 S.Ct. 174 (1969) | 5 |
| Stanturf v. Sipes, 335 F.2d 224 (8th Cir. 1964), cert. denied 379 U.S. 997, 85 S.Ct. 676 (1965) | 4, 5 |

SUPREME COURT OF THE UNITED STATES

---

**October Term, 1976**
**No. 477**

---

MARY F. MC NAMARA AND ANARITA MC NAMARA,

*Petitioners*

Versus

REDEVELOPMENT AUTHORITY OF THE CITY OF SCRANTON, et al.,

*Respondents*

---

*On Petition for Writ of Certiorari to the Supreme Court of Pennsylvania*

---

# BRIEF FOR RESPONDENT, REDEVELOPMENT AUTHORITY OF THE CITY OF SCRANTON, IN OPPOSITION

---

## QUESTION PRESENTED

---

Does an alleged misapplication of state law by a state court constitute a denial of equal protection of the laws under the Fourteenth Amendment?

## STATEMENT OF THE CASE

The respondents herein are Redevelopment Authority of the City of Scranton (Redevelopment Authority), a corporation engaged in the planning and implementation of urban renewal projects of the City of Scranton, Commonwealth of Pennsylvania, and TCS-1, the latter a Pennsylvania nonprofit corporation chartered to sponsor, develop and provide housing units under the provisions of the National Housing Act.

On March 1, 1969, the Redevelopment Authority instituted eminent domain proceedings against property located in the City of Scranton which was owned by the Petitioners herein. On November 12, 1969, the Redevelopment Authority entered into a contract to convey the subject premises to TCS-1 for the purpose of developing the area in which the property was located and to provide housing.

Petitioners herein filed preliminary objections to the Redevelopment Authority's declaration of taking in the Court of Common Pleas of Lackawanna County, Pennsylvania. These objections were dismissed. Petitioners' subsequent appeal to the Commonwealth Court of Pennsylvania was also dismissed. Reconsideration was applied for and denied by the Commonwealth Court and a petition for allocatur was denied by the Supreme Court of Pennsylvania.

Petitioners then sought relief in the Federal Courts by means of a petition for an injunction for the United



States District Court for the Middle District of Pennsylvania. The appeal to the United States Court of Appeals for the Third Circuit followed. This appeal was dismissed for failure to perfect the appeal.

At the conclusion of the above events, TCS-1 brought an action against Respondent Redevelopment Authority in the Court of Common Pleas of Lackawanna County, Pennsylvania for specific performance of the aforementioned contract to convey. On September 16, 1974, a final decree in this proceeding was entered ordering the Redevelopment Authority to demolish and remove to grade all existing buildings and structures on the subject premises and to execute and deliver a deed to Respondent TCS-1 conveying a clear and marketable title to the premises.

Respondent Redevelopment Authority in an attempt to comply with the aforesaid decree filed a praecipe for a rule of possession in the Court of Common Pleas of Lackawanna County which directed Petitioners herein to show cause why they should not deliver up possession of the subject premises to the Redevelopment Authority.

The current posture of these lengthy proceedings is that the Redevelopment Authority, by means of the final judgment awarding possession of the subject premises to it, is now in a position to comply with the aforesaid order of the Court of Common Pleas of Lackawanna County which directed it to convey title and possession to Respondent herein, TCS-1 . However, Respondent Redevelopment Authority has not yet executed on its judgment of possession pending this proceeding before your Honorable Court.

## ARGUMENT

It appears to be Petitioners' contention that when the trial court dismissed their preliminary objections to Respondent Redevelopment Authority's praecipe for a rule of possession because of "lack of merit on their face", that Petitioners were denied equal protection on the laws under the Fourteenth Amendment.

The Pennsylvania courts did not misapply its state law in the intent situation. However, even assuming that its court did err, it is our contention that such a misapplication is not a denial of equal protection under the Fourteenth Amendment. In *Beck v. Washington,* 369 U.S. 541, 554-555, 82 S.Ct. 955, 962-963 (1962), it is stated that:

> "Such misapplication (of state law) cannot be shown to be an invidious discrimination. We have said time and again that the Fourteenth Amendment does not assure uniformity of judicial decisions *** (or) immunity from judicial error ***. Milwaukee Electric Ry. & Light Co. v. Wisconsin ex rel. Milwaukee, 252 U.S. 100, 106, 40 S.Ct. 306, 309, 64 L.Ed. 476 (1920). Were it otherwise, every alleged misapplication of state law would constitute a federal constitutional question."

Additionally, the Eighth Circuit Court of Appeals stated that: "No denial of equal protection is demonstrated unless there is shown intentional or purposeful discrimination between persons or classes." *Stanturf v.*



*Sipes,* 335 F.2d 224, 228 (8th Cir. 1964), *cert. denied,* 379 U.S. 997, 85 S.Ct. 676 (1965). We have no such discrimination involved in the present matter.

Another analogous situation presents itself in *Delia v. Court of Common Pleas of Cuyahoga County,* 418 F. 2d 205, 206 (6th Cir. 1969), *cert. denied,* 396 U.S. 886, 90 S.Ct. 174 (1969). There the Court concluded that:

> "If it should be assumed that the Ohio courts did not correctly apply the law of Ohio to appellant's case, there is nevertheless a lack of any allegations in the complaint tending to show a purposeful discrimination. Certainly, a construction of the equal protection clause is not favored which would in effect allow a federal court to relitigate a state court case upon every alleged departure from state law by state officers."

The Respondent herein, Redevelopment Authority, hereby states that it adopts the arguments and conclusions as set forth in Respondent TCS-1's brief in opposition to the Petitioners' petition for writ of certiorari.

## CONCLUSION

It is respectfully submitted that the misapplication of state law, as alleged, was not a denial of Petitioners' right to equal protection of the law under the Fourteenth Amendment. The petition for certiorari should be denied.

Respectfully submitted,

ROGER MATTES,
Mears Building,
Scranton, Pennsylvania 18503
*Attorney for Respondent, Redevelopment Authority of the City of Scranton.*

*Of Counsel:*

LEO A. SOUTHARD
PHILIP R. EVANS
700 Scranton Electric Bldg.,
Scranton, Pennsylvania 18503